

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID McKINNIE,

Plaintiff,

vs.

Case No. _____

L.C. Case No. 20-710-NO

WAL-MART STORES EAST, LP,
d/b/a WALMART SUPERCENTER,
a Foreign corporation,

Defendant.

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DEFENDANT WAL-MART STORES EAST, LP'S NOTICE OF REMOVAL

NOW COMES, Defendant, WAL-MART STORES EAST, LP, ("Defendant"), by and through its attorneys, ZAUSMER, P.C., and hereby removes this case from St. Clair County Circuit Court, pursuant to 28 U.S.C. §§ 1441(a) and 1446(a), for the reason that diversity of citizenship exists between the Plaintiff, DAVID McKINNIE, ("Plaintiff"), a citizen and resident of St. Clair County in the State of Michigan, and Wal-Mart Stores East, a Limited Partnership

organized under the laws of the State of Delaware with its principal place of business in Bentonville, Arkansas. (See Paragraph One of Plaintiff's Complaint, attached as **Exhibit "A"**.) Service has been effectuated upon Plaintiff, and in support of its Notice of Removal of this action, Defendant states the following:

1. This action is pending in the St. Clair County Circuit Court in the State of Michigan. The Complaint was filed with the Circuit Court on or around May 15, 2020. (See Plaintiff's Complaint, attached as **Exhibit "A"**.)

2. Defendant was served with Plaintiff's Summons and Complaint by certified mail on August 14, 2020. (See Service of Process Transmittal Form, attached as **Exhibit "B"**.)

3. This Notice of Removal is filed within thirty (30) days after Defendant was served with the Summons and Complaint, in compliance with 28 U.S.C. § 1446(b). Pursuant to 28 U.S.C. §1446(a), a copy of the Complaint is attached as **Exhibit "A"**.

4. This Court has jurisdiction over this action, pursuant to 28 U.S.C. §1332. Jurisdiction exists because the parties are respectively citizens of different states and the amount in controversy alleged in the Complaint, exclusive of costs, allegedly exceeds Seventy-Five Thousand and 00/100 (\$75,000.00) Dollars.

- A. Based on the allegations in the Complaint, Plaintiff is a citizen of the State of Michigan and resides in St. Clair County. (See Plaintiff's Complaint at Paragraph One, attached as **Exhibit "A"**.)
- B. Defendant, WAL-MART STORES EAST, LP, is a Limited Partnership organized under the laws of the State of Delaware, with its principal place of business in Bentonville, Arkansas. Defendant is not a citizen of the State of Michigan.
- C. Defendant, WAL-MART STORES EAST, LP'S limited and general partners are not citizens of the State of Michigan:
- General Partner
WSE Management, LLC
702 S.W. 8th Street
Bentonville, Arkansas 72716-0555
WSE Management, LLC is a Delaware Limited Liability Company with a principal place of business in Bentonville, Arkansas.
 - Limited Partner
WSE Investment, LLC
702 S.W. 8th Street
Bentonville, Arkansas 72716-0555
WSE Investment, LLC is a Delaware Limited Liability Company with a principal place of business in Bentonville, Arkansas.
- D. The sole member of WSE Management, LLC and WSE Investment, LLC is Wal-Mart Stores East, LLC (formerly known as Wal-Mart Stores East, Inc.), an Arkansas Limited Liability Company. The principal place of business for the aforementioned entities is Bentonville, Arkansas. Wal-Mart Stores, Inc. is the sole member of Wal-Mart Stores East, LLC, and is a corporation organized under the laws of the State of Delaware, whose principal place of business is in the State of Arkansas.

E. Further, according to the allegations in Plaintiff's Complaint, the amount in controversy, exclusive of interest and costs, is in excess of Seventy-Five Thousand and 00/100 (\$75,000.00) Dollars. Specifically, Plaintiff alleges, *inter alia*, in his Complaint, that he sustained serious and disabling injuries, including, but not limited to:

- i. Severe injury to the left hand;
- ii. Pain and suffering (past and future);
- iii. Disability and permanent disfigurement;
- iv. Mental anguish (past and future);
- v. Denial of social pleasures and activities of life;
- vi. Embarrassment, humiliation and mortification; and
- vii. Medical expenses (past and future).

(See Plaintiff's Complaint at Paragraphs 7 and 8 attached as **Exhibit "A"**.)

F. Additionally, Defendant has requested that Plaintiff cap his alleged damages claim at Seventy-Five Thousand and 00/100 (\$75,000.00) Dollars or less. (See Correspondence to Plaintiff's Attorney, dated August 18, 2019, attached as **Exhibit "C"**.) However, to date, Plaintiff has declined to cap his alleged damages claim because he believes, at this juncture, his alleged damages are in excess of Seventy-Five Thousand and 00/100 (\$75,000.00) Dollars.

6. For purposes of diversity of jurisdiction, a corporation is a citizen of "any State by which it has been incorporated and of the State where it has its

principal place of business ...” See *Delph Automotive Systems, LLC v. Segway Inc.*, 519 F.Supp.2d 662, 665 (E.D. Mich. 2007).

7. In view of the above, there is complete diversity of citizenship between the parties.

8. Accordingly, based on the information known to date, this action may be removed from State Court to Federal Court, pursuant to 27 U.S.C. §§ 1332 and 1446(b). Defendant will file a copy of this Notice of Removal with the Clerk of the St. Clair County Circuit Court in the State of Michigan. Further, Defendant will serve copies of this Notice on Counsel of record for Plaintiff.

Respectfully Submitted,

ZAUSMER, P.C.

/s/ Nicole M. Wright

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Dated: September 9, 2020

CERTIFICATE OF SERVICE

I hereby certify that on **September 9, 2020**, I electronically filed the foregoing paper with the Clerk of the Court, using the ECF system and copies of such documents were served upon the following individual by U.S. Mail:

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